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FILED
 ALAMEDA COUNTY

MAR 06 2019

CLERK OF THE SUPERIOR COURT

By Sue Pesko Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

EUSTOLIA VILLASEÑOR,

Plaintiff,

v.

TESLA, INC.; and DOES 1 to 100, inclusive

Defendants.

Case No.: RG18892309

TESLA INC.'S CROSS-COMPLAINT

Complaint Filed: February 7, 2018
 Trial Date: June 14, 2019

TESLA, INC.,

Cross-Complainant,

v.

CMF Group, Inc. and ROES 1 to 100,
inclusive

COMES NOW Cross-Complainant TESLA, INC., a Delaware corporation, and alleges as follows:

I. GENERAL ALLEGATIONS

1. At all times relevant to this lawsuit, Cross-Complainant was and is a corporation authorized to do, and doing business within the State of California.

2. At all times herein mentioned Cross-Defendant CMF Group Inc. was and is a business entities of unknown form, authorized to do, and doing business within the State of California.

3. That the true names and capacities, whether individual, corporate, associate or otherwise,

BY FAX

1 of Cross-Defendants, ROES 1 through 100, inclusive, and each of them, are unknown to Cross-
2 Complainant, who therefore sues said Cross-Defendants by such fictitious names, and Cross-
3 Complainant prays that when the true names and capacities are ascertained, it may have leave to
4 file its amendment as to the true names and capacities together with appropriate charging
5 allegations.

6 4. Cross-Complainant is informed and believes and thereon alleges that at all times herein
7 mentioned, each of the Cross-Defendants was the agent and/or employee of the remaining Cross-
8 Defendants, and each of them, and in doing the acts hereinafter alleged, were acting within the
9 course and scope of such agency and/or employment and/or with the permission and/or consent of
10 the remaining Cross-Defendants, and each of them.

11 5. Cross-Complainant has been made party Defendant in a Complaint in the Superior Court of
12 California, in and for the County of Alameda, Case No. RG18892309. The Complaint is
13 incorporated herein by reference without admitting any of the allegations of such Complaint.
14

15 6. In her Complaint, Plaintiff EUSTOLIA VILLASEÑOR alleges that Defendant is legally
16 responsible for personal injuries suffered while acting "within the course and scope of her
17 employment as a welder with her employer CMF Group Machinery Installation." (Complaint,
18 ¶10.) She further alleges that she "was working at the Tesla Factory project (the 'subject project')
19 in Fremont, California.) (Complaint, ¶10.) Plaintiff claims that Cross-Complainant is responsible
20 for her injuries on theories of negligence, failure to provide a safe work environment, failure to
21 correct a dangerous condition, premises liability, and similar theories. (Complaint ¶¶ 12-34.)

22 7. While Cross-Complainant denies all of Plaintiff's allegations, it further alleges on its own
23 behalf that it was not responsible for Plaintiff's alleged damages, and that Cross-Complainant
24 owes no duty to Plaintiff with regard to the facts and circumstances surrounding the allegations of
25 the Complaint.

26 WHEREFORE, Cross-Complainant prays for judgment as hereinafter set forth.
27
28 //

1 **II. FIRST CAUSE OF ACTION**

2 (Express Contractual Indemnity

3 as against ROES 1-100)

4
5 8. Cross-Complainant realleges and incorporates all of the allegations contained in paragraphs
6 one through seven of the general allegations as though fully set forth herein.

7 9. At all times herein mentioned, Cross-Defendant CMF GROUP INC. and DOES 1-20
8 entered into a written contract with Cross-Complainant to provide production equipment and
9 services. A document identified as "General Terms and Conditions for Procurement of Production
10 Equipment and Services" between Cross-Complainant and Cross-Defendant CMF GROUP INC.
11 and DOES 1-20 was executed on or about December 16, 2016. This document has been identified
12 in this litigation as "Tesla Confidential" pursuant to the stipulated protective order issue in this
13 case and is not attached to this pleading.

14 10. The "General Terms and Conditions for Procurement of Production Equipment and
15 Services" identified in Paragraph 9 expressly states that Tesla may issue a purchase order for
16 anticipated needs to the "Seller," and that "The Purchase Order will be deemed accepted if: (i)
17 Seller acknowledges in writing its acceptance of the Purchase Order; or (ii) Seller has begun or
18 later begins performance under the Purchase Order."

19 11. Tesla Inc. did issue purchase order(s) to Cross-Defendant CMF GROUP INC. and DOES
20 1-20, including but not limited to PO # 7000000318, for work at the TESLA facility where
21 Plaintiff was working and where she alleges to have been injured.

22
23 12. Cross-Defendant CMF GROUP INC. and DOES 1-20 did accept the purchase orders,
24 including but not limited to PO # 7000000318. Plaintiff was working at the Tesla facilities
25 pursuant to the subject contract with CMF GROUP INC. and DOES 1-20 and the purchase orders
26 issued under that contract at the time of the subject incident.

27 13. The "General Terms and Conditions for Procurement of Production Equipment and
28 Services" includes the following express indemnity language:

1 10. Third Party Claims

2 10.1 Seller will indemnify, defend and hold harmless Tesla, Tesla's Affiliates and
3 their respective officers, directors, employees, agents and representatives
4 (collectively, "Tesla Indemnitees"), from any and all costs, fees, penalties,
5 expxenses, damages, attorneys' fees, judgments and liabilities ("Losses") arising
6 from, in connection with, or based on allegation of any of the following:

7 ...

8
9 (b) Claims arising from Seller's acts or omissions in the performance of its
10 obligations under the contract

11 ...

12 (c) Claims by, on behalf of, or for Seller Personnel (and for purposes of this
13 Subsection, Seller hereby waives any immunity provided by applicable workers'
14 compensation or similar laws):

15 ...

16
17 (h) Claims arising from Seller's breach of Section 9.4 (Safety Standards.)

18 14. Plaintiff was an employee, contractor, or other agent of CMF GROUP INC. and DOES 1-
19 20 at the time of the Subject Incident, Cross-Complainant further alleges that the Subject Incident
20 occurred due to CMF GROUP INC. and DOES 1-20 acts or omissions in the performance under
21 the contract, specifically but not limited to their failure to ensure a safe workplace for their
22 employees, and CMF GROUP INC. and DOES 1-20 failed to comply with the Safety Standards in
23 Section 9.4 of the "General Terms and Conditions for Procurement of Production Equipment and
24 Services." Therefore, CMF GROUP INC. and DOES 1-20 owe Cross-Complainant defense and
25 indemnity for Plaintiff's injuries arising from the Subject Incident.

26 15. Pursuant to the contract, Cross-Defendant has agreed to defend and indemnify Cross-
27 Complainant for exactly the type of claim which is the subject of Plaintiff's Complaint on file
28 herein.

1 16. Cross-Complainant has performed all of the obligations under said agreement.

2 17. Cross-Complainant has provided sufficient notice of this claim has demanded that CMF
3 GROUP INC. and DOES 1-20 defend and indemnify Cross-Complainant in this matter and has
4 tendered its defense. CMF GROUP INC. and DOES 1-20 have refused to conform and comply
5 with their contractual obligations.

6 18. Cross-Complainant is informed and believes, and on such information and belief alleges
7 that if it has any liability in this matter, such liability is due to and caused by the breach of
8 contractual obligations and duties of the above named Cross-Defendants.

9 19. Cross-Complainant has been damaged as a result of the breaches by said Cross-Defendant
10 of its respective duties and obligations under the subcontract, in an amount as yet to be ascertained.

11 20. Cross-Complainant now re-tenders the defense of this action by Plaintiff against this Cross-
12 Complainant to said Cross-Defendant.

13 21. Cross-Complainant has been compelled to incur attorneys' fees, investigative, court and
14 other costs to protect itself in said litigation, and has therefore been damaged as a result of the
15 breaches of said Cross-Defendant of its respective duties and obligations under the subcontract.
16 This amount is not yet known, and there will be further resubmitures in order for Cross-
17 Complainant to respond to the claims of Plaintiff in the underlying Complaint.
18

19 WHEREFORE, Cross-Complainant prays for judgment as herein set forth.

20 1. For an order an declaration of the court that Cross-complainant is entitled to be
21 indemnified and held harmless against the allegations of Plaintiff herein by Cross-Defendants, and
22 each of them;

23 2. In the event that judgment is entered in favor of Plaintiff herein and against Cross-
24 Complainant, that a judgment be entered in the same amount in favor of Cross-Complainant and
25 against Cross-Defendants, and each of them;

26 3. For all damages suffered by Cross-Complainant by reason of Plaintiff's Complaint;

27 4. For all costs and expenses incurred in the defense of Plaintiff's action by Cross-
28

1 Complainant, and incurred in preparation and in pursuit of this Cross-Complaint;


2 5. For attorneys' fees and other necessary expenses; and

3 6. For such other and further relief as the court may deem just and proper under the
4 circumstances.
5

6 DATED: March 5, 2019

SIDRAN LAW CORP

7
8 By:


9 DAVID R. SIDRAN
10 THOMAS M. CROWELL
11 Attorneys for Defendant
12 TESLA, INC.
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PROOF OF SERVICE

Villaseñor v. Tesla, Inc.

Alameda Superior Court Case No.: RG18892309

I, the undersigned, am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is Sidran Law Corp. 2010 Crow Canyon Place, Suite 100, San Ramon, CA 94583.

On March 5, 2019, I served the within:

SUMMONS CROSS COMPLAINT; TESLA INC.'S CROSS-COMPLAINT

<input checked="" type="checkbox"/>	BY MAIL: By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Ramon, California, to the person(s) at the address(es) as set forth below.
<input type="checkbox"/>	BY PERSONAL SERVICE: By having a true copy thereof personally delivered to the person(s) at the address(es) as set forth below.
<input type="checkbox"/>	BY FACSIMILE: By sending a copy from facsimile number (925) 529-1350 to the person(s) at the facsimile number(s) as set forth below.
<input type="checkbox"/>	BY OVERNIGHT DELIVERY: By placing a true copy thereof enclosed in a sealed envelope, to be delivered by guaranteed overnight delivery with Federal Express, to the person(s) at the address(es) as set forth below.
<input type="checkbox"/>	BY ELECTRONIC MAIL (E-MAIL): By electronically mailing an Adobe .pdf version from e-mail address _____@sidranlaw.com via Sidran Law Corp's electronic mail system to the person(s) at the e-mail address(es) as set forth below.

<u>ATTORNEY FOR PLAINTIFF</u>	<u>ATTORNEYS FOR LIEN HOLDER</u>
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 5, 2019, in San Ramon, California.



Kharyl Mithkeaw